

**REMARKS**

The above amendments and following remarks are responsive to the points raised in the June 15, 2006 non-final Office Action. Upon entry of the above amendments, Claims 1, 4, and 9 will have been amended, Claims 2, 3, 6, 7, and 10-12 will have been canceled, and Claims 1, 4, 5, 8, and 9 will be pending. No new matter has been introduced. Entry and reconsideration are respectfully requested.

**Response to Claim Objections**

Claims 1, 4, 7, 9, 12, and 13 have been objected to on the basis of various identified informalities. Applicant has amended the claims to obviate the objections identified by the Examiner. As such, the objection is now moot.

Accordingly, the objection to the claims should be withdrawn.

**Response to Rejection under 35 U.S.C. § 112, Second Paragraph**

Claims 1-3, and 11 have been rejected under 35 U.S.C. § 112, second paragraph, on the basis that these claims are indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the Examiner urges that “[i]n Claim 1, line 15, applicant claims ‘changes over a controlling method’. It is unclear as to what the ‘controlling method’ controls.” Applicant has amended the claims to obviate the rejection. As such, the rejection is now moot.

Accordingly, the objection to the claims should be withdrawn.

**Response to Rejection under 35 U.S.C. § 102(b)**

Claims 1-3 and 11 have been rejected under 35 U.S.C. § 102(b) as being unpatentable over US Patent 6,217,172 to Shibutani et al. (Shibutani). Claims 4-10, 12, and 13 have been rejected under 35 U.S.C. § 102(b) as being unpatentable over US Patent 5,889,576 to Fujieda. Applicant traverses these rejections and respectfully urges that the applied references to Shibutani and/or Fujieda neither teach nor suggest the subject matter as recited in Applicant's claims.

The subject matter recited in independent Claim 1 has a feature that the alignment manner of an eye examining portion unit is changed in accordance with a value of the pupil diameter of the eye.

On the contrary, in the description, Column 13, Line 62, through Column 14, Line 7, of Shibutani, it is disclosed that a horizontal to a vertical ratio of diameter of pupil is detected to determine a blink. As such, the subject matter recited in independent Claim 1 is distinguished over the applied reference to Shibutani.

The subject matter recited in independent Claim 4 has a feature that it is determined that the amount of eccentricity, which is a distance between a central position of a pupil and a position of a vertex of a cornea, is greater/smaller than the predetermined value.

On the contrary, in the description, Column 5, Line 43, through Column 6, Line 33, of Fujieda, it is disclosed that it is determined whether the rectangle area is located within the range of the pupil of the eye, and, if not, the alignment operation is performed to make the rectangle area located at the center of the pupil. In the actual operation, the measurement target is a circular form and the apparatus of the present invention can execute the determination more precisely than a case in the apparatus shown in the reference. As such, the subject matter of

independent Claim 4, as well as dependent Claims 5 and 8, are distinguished over the applied reference of Fujieda.

The subject matter of independent Claim 9 has a feature that the controller makes the tolerance level of the alignment between the eye examining portion unit smaller in a case where the pupil diameter is smaller than a predetermined value. The reference to Fujieda, however, discloses, in Column 6, Lines 44-54, that since the determination using the expression 1 in Column 5 can not be executed in a case where the diameter of the pupil is smaller than the rectangle area, the measurement operation is performed when the alignment is performed so as to make the area in the predetermined tolerance area. That is, the reference fails to show or suggest that the tolerance level is a value as recited in Claim 9. As such, the subject matter recited in independent Claim 9 is distinguished over the applied reference of Fujieda.

Accordingly, the rejections under 35 U.S.C. § 102(b) should be withdrawn.

## **CONCLUSION**

Applicant respectfully submits that Claims 1, 4, 5, 8, and 9 are in condition for allowance and a notice to that effect is earnestly solicited.

**AUTHORIZATION**

The Commissioner is hereby authorized to charge any fees which may be required for filing this Amendment and Request for Reconsideration to Deposit Account No. 13-4500, Order No. 1232-5273.

Respectfully submitted,

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